



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Texas Elevator Company, Inc.

File: B-233009

Date: October 25, 1988

DIGEST

A bidder may not, after bid opening, substitute acceptable individual sureties for ones deemed unacceptable because such a substitution would alter the sureties' joint and several liability under the bid bond, the principal factor in determining the bid's responsiveness to the bid guarantee requirement.

DECISION

Texas Elevator Company, Inc., protests the General Services Administration (GSA) rejection of its bid for the modernization of elevators under invitation for bids (IFB) No. GS-11P88MKC0148 as nonresponsive. The protester contends that replacement of the original bond sureties, who were not willing to sign the Covenants Not To Encumber or Convey Real Estate, with two others who were willing to sign, did not render the bid nonresponsive.

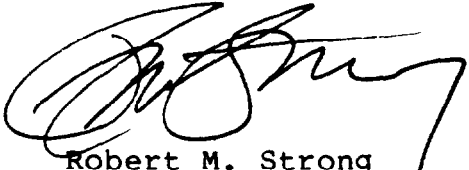
We dismiss the protest without obtaining an agency report because it is clear from the protester's submission that the protest is without merit. 4 C.F.R. § 21.3(m) (1988).

Texas submitted a bid on February 25, 1988, which was guaranteed by individual sureties, Daniel J. Wallenbach, and Richard B. Stair. On March 4, 1988, GSA requested Covenants Not To Encumber Or Convey Real Estate from the individual sureties. The two original sureties were not willing to sign the covenants and the protester submitted two new sureties who signed the covenant. On August 17, GSA notified the protester of its determination that the protester's bid was nonresponsive.

The replacement of an unacceptable surety after bid opening is not allowable. Such a substitution necessarily would alter the joint and several liability of the sureties under the bid bond, the principal factor in determining the

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responsiveness of the bid to the guarantee requirement. Elements of a bid which go to the bid's responsiveness cannot be changed after bid opening. S. Livingston & Son, Inc., 54 Comp. Gen. 593 (1975), 75-1 CPD ¶ 24. We, therefore, agree with GSA's refusal to permit the surety substitution proposed in this case. Clear Thru Maintenance, Inc., B-203608, June 15, 1982, 82-1 CPD ¶ 581.



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